A LETTER FROM CANDOR, TO THE PUBLIC ADVERTISER.

Honi ſoit qui mal y penſe.

St. GEORGE of England.

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CANDOR *presents his Compliments to Mr.* Almon, *and desires he will convey for him the following* Letter, *a small part of which has been printed already. As Mr.* Almon *has hitherto published nothing but what is in opposition to the present Ministry,* CANDOR *thinks it is high time for him to shew some impartiality, by letting the world see what may be said in favour of some of the great men in office; and for this reason desires he will be the editor of the subsequent pages. Seeing all people agree that the Liberty of the Press should never be violated, and that it does no service, in the long run, to any man that attempts it, every Printer should be totally free, and therefore impartial.*

GRAY'S-INN,
Aug. 31, 1764.

A

LETTER, &c.

SIR,

AS your correſpondent CRITO, has very properly, in the Public Advertiſer of the 29th of laſt month, taken notice of the late verdicts obtained by the Government againſt the Printers of the North Briton, No. 45, for a Libel; Give me leave to add, that he ſhould, at the ſame time, have given due praiſe to the Great Juſticiary, who tried the Defendants, for the legal part he acted upon that occaſion. His Lordſhip, in a very maſterly manner, interrupted the Counſel, and informed them, and afterwards, in an elaborate diſcourſe, clearly inſtructed the Jury, that the words in the Information, charging the paper to have been publiſhed with the moſt wicked intent, in order to excite his Majeſty's dutiful ſubjects to ſedition, and charging it to be a falſe, ſcandalous, and ſeditious Libel, were words of courſe; like corrupt in an indictment for Perjury, or like thoſe in an indictment for Murder, charging the murder to have been committed *at the Inſtigation of the Devil*, and that the Jury ought not to regard them at all, but to conſider merely whether the Defendants had publiſhed the Paper. His Lordſhip's ſumming up was particularly long, pathetic, and explanatory, and abounded with well-adapted obſervations, and ingenious diſtinctions. Among other ſtriking inſtances, wherein he pointed out the evil effect of this free Writer's papers, he mentioned, very juſtly, the article of Cyder, which has, as we all know, raiſed ſo much diſcontent and ferment of late throughout the greateſt part of England. One

would have thought a deliberate and able ſpeech of this kind, upon a matter of very general conſequence, delivered from the Bench by the ſupreme Magiſtrate, under all the circumſtances of ſolemnity, awe and reſpect, attending the higheſt Court of criminal juriſdiction, eſpecially when accompanied with an eaſy, familiar, friendly and winning addreſs, would have entirely convinced any twelve unprejudiced and unlearned people. It muſt, in my conſcience, have ſtrongly affected them. How could they, uninformed as they were before-hand, in the leaſt withſtand the firſt Law-judge of the realm, upon a legal and conſtitutional point! However, in fact, it muſt be admitted that the Jury doubted about their verdict for an hour and a half, notwithſtanding this clear inſtruction from the Chief Juſtice of England; imagining, I ſuppoſe, it was new doctrine, and that they were really at liberty to conſider the whole nature and tendency of the publication, and whether the paper was a falſe and malicious libel or not, agreeable to what it was charged to be in the information, and not merely who publiſhed it; concluding, probably, that if ſuch repreſentation were immaterial, this Great Judge, who has ſo much to his reputation already very greatly ſhortened and altered the uſual proceedings in all cauſes and trials, would have long ago forbid the crown-pleaders to inſert ſuch unneceſſary words, and have reduced the charge to a mere averment of the fact, that ſuch perſons publiſhed ſuch a paper, without giving any name or character to it at all. And, in truth, it were much to be wiſhed that theſe ſtrange charges, ſo uſeleſs and expenſive, ſhould be totally omitted for the future. For Juries, after being ſworn, are ſolemnly bid to liſten to the charge whereon they are to paſs between the King and the Defendant, and then have the whole of theſe long informations gravely read to them, without any diſtinction of parts, whereby they muſt ever be led into a notion that they are bound, on the oaths they have taken, to conſider the whole of what is ſo read to them, as their charge, and to determine thereon; and it is well known that Juries, at beſt,

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are but too apt to form ſtrange judgments, and to do the wrong thing. Indeed, I remember, not many years ago, to have heard a very great Law-oracle, upon a motion for a new trial, take the opportunity of pronouncing it as his opinion, to the admiration of every body, that "the Trial by Jury was a very bad ſort of "trial, and would be the worſt of all, were it not for "the controlling power of Judges, by the granting of "new trials," *&c.* Now the law touching Libels, is a matter far above the reach of any Jury; and it is not Lord ********* that has ſtarted the notion, or broached a new opinion. In the end of Charles the Second's reign, that great and famous Judge, Lord Chief Juſtice Jeffreys, ſaid the ſame thing. Look into the State-trial of Sir Samuel Bernardiſton, for a Libel in thoſe days, in publiſhing ſome letters on the behalf of Algernon Sidney and Lord Ruſſell, which highly reflected on the King and his Government, and you will find, that when the Counſel for the Defendant pretended that the part of the Information, which charged theſe letters to be a falſe, ſcandalous, and ſeditious libel, was a matter for the Jury's conſideration, that able Chief Juſtice interrupted him, and ſaid, "Let us have none of that "doctrine. The Law ſupplies the proof; the thing "itſelf ſpeaks malice and ſedition. As it is in Murder, "we ſay always in the Indictment: *He did it by the "inſtigation of the Devil.* Can the Jury find he did it "not by ſuch inſtigation? So in informations, for "offences of this nature, we ſay, He did it falſely, ma-"liciouſly, and ſeditiouſly; which are the formal words: "but the nature of the thing neceſſarily imports Ma-"lice, Reproach, and Scandal to the Government: "there needs no proof but of the fact done, the Law "ſupplies the reſt." And the ſame Lord afterwards, in ſumming up to the Jury, enlarged upon, and enforced the ſame arguments, ſaying, among other things, "The proof of the thing itſelf proves the evil mind it "was done with. If then, Gentlemen, you believe "the Defendant did write and publiſh theſe letters, "that is proof enough of the words Maliciouſly, Se-

"ditiouſly,

" ditiouſly, and Factiouſly, laid in the Information. " It is high time for all mankind to beſtir themſelves, " to rid the nation of ſuch Caterpillars as theſe are. " As for any thing that he has ſaid of me, Sir Samuel " ſhall write and ſpeak of me, as long as he pleaſes. " But though he ſays, *I am down in the Mouth*, yet I " hope I ſhall never loſe my heart nor ſpirit to ſerve " the Government, nor forbear to uſe my utmoſt dili- " gence, to ſee that ſuch offenders as theſe, that enter- " tain principles ſo deſtructive to the Government, be " brought to condign puniſhment. And, be they who " they will, were they *my own brothers*, I ſhould be of " the ſame mind. Gentlemen, the queſtion before ye " is, Whether the Defendant be guilty of writing " theſe malicious, ſeditious letters, that tread very near " upon the borders of High Treaſon itſelf. I am ſure " I may venture to call it Couſin German to High " Treaſon. I would not have given you ſo much trou- " ble at this time in an affair of this nature, but only " becauſe I ſee it is a matter of great expectation and " conſequence. They are Traitors in their minds, " whatſoever they are in their outward pretences." In ſhort, the language of Law, touching Libels, was, in the Court of King's Bench, the ſame before the Revolution as it is now. And Lord Jeffreys and Lord ********* not only concur in ſentiment, but in expreſſion. But, although both of theſe great men are remarkable for the abilities they have ſhewn when preſiding in the King's Bench, yet there is a wide difference between their manners and characters. The former was always reckoned a Lawyer, bold, and outrageous; whereas I never heard any one of theſe terms applied to the latter; and, in particular, his agreeable and conciliating demeanor, to a Jury, is univerſally admired. I preſume their natural tempers muſt be very different, as well as their original connections and educations; in all probability, the Great Lord now living, has many accompliſhments of Art and Eloquence, which the other wanted; and he has withal had the advantage of having ever practiſed in Courts of Equity; which circum-

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ſtance alone ſurpriſingly ſoftens the Rigor of the old Common Law, and accommodates it more to the humour and turn of the age. In ſhort, he perceives how little regard the old adjudications deſerve from a change in the times. He is beſides ſo peculiarly acute, refined, and logical, in his diſtinctions between caſes of Law, which, to ordinary men, ſeem to be the ſame, and to be caſes in point; and, in trials by Jury, he is ſo able in ſeparating or aſſembling (as the cauſe may require) the different parts of the teſtimony, and in paſſing over or ſlurring one fact as immaterial, and enforcing another as material; that he never fails of carrying, to every auditor at the time, the appearance of right or wrong along with him. What a happineſs therefore it is, to have one's ſuit determined, or tried, by a perſon of ſo nice a diſcernment, and of ſo much judgment and capacity! He is ſo happy, likewiſe, in a memory, that he forgets nothing, and therefore wants no repetition of matters that have been once laid before him: inſomuch that he can deliver the evidence, or, at leaſt, what he may regard as the neceſſary part of it, by his memory alone, and as it were in a ſpeech, without having much recourſe to his notes, or to the uſual dull way of rehearſing it word for word. The ſtrength of his faculties of remembrance cannot be better illuſtrated than by a familiar and domeſtic, but very remarkable inſtance of the faithfulneſs of his recollection, and that is, that he can even remember all the healths he himſelf has drank ſince his being twelve, or, at moſt, fourteen years of age. His predeceſſors, it is true, had every affidavit read over and over again, and uſed merely to ſtick to the letter of old precedents in points of Law; and, in trials by Jury, were religiouſly accuſtomed to write down, and afterwards moſt regularly to read out, every tittle of the evidence as it had been delivered, with little or no obſervation, leaving the Jury to judge of the facts in their own way, and according to their own underſtandings. But, as the end of all Law is ſubſtantial Juſtice, if That be obtained, in ſpite of old rules or old caſes, Is it not ſo much

much the better for the ſubject? eſpecially if it be compaſſed in leſs time, and in a more ſummary way.

Let men, however, differ ever ſo widely in other reſpects, I hope for the peace of the community, that the trials which gave riſe to this letter, will never be forgotten, and that unlearned men will acquieſce in the reſpectable authorities which I have quoted, and ceaſe to reflect upon government, or the ways of adminiſtration and public juſtice. In God's name, what buſineſs have private men to write or to ſpeak about public matters? Such kind of liberty leads to all ſorts of licenſe and obloquy, the very reverſe of politeneſs; and the greateſt man, be he ever ſo cautious, if ſuch things are endured, may be traduced.

But what need I ſay any thing more upon this head, when both Houſes of Parliament have lately expreſſed their deteſtation of libellous offences ſo ſtrongly, as to put the writing of a libel upon the footing of an *actual* breach of the peace, and not merely of the doing of ſomething that may, by poſſibility, produce a breach of the peace, or that tends to, or may excite people to break it? Whether any body is, or is not provoked by writings under this denomination, to do any thing in conſequence thereof, ſuch publication alone, (as I conceive) is nevertheleſs within the ſpirit of their reſolution to be proceeded againſt as an *actual* breach of the peace. So that if any Member write any thing that reflects upon the Adminiſtration, the Attorney General has it in his power to denominate what is ſo written a Libel, to file an Information *ex officio*, (that is, of his own mere authority, without leave from any Court of Law, Preſentment of a Juſtice of Peace, finding of a Grand Jury, or information upon oath from any perſon whatſoever) againſt the ſuppoſed writer, and the Court of King's Bench will thereupon immediately grant a warrant for his apprehenſion, and he will be obliged, by virtue thereof, not only to find bail, that is, pledges for his appearance before a Jury, to try the truth of the charge; that is, to ſubmit the matter to the judgment of his country, but alſo [as I collect from the

arguments

arguments used upon the occasion] to find sureties for the peace, or his good behaviour in the mean time, as a creature of so violent and pernicious a disposition, that the world cannot be in safety, if he be permitted to go at large, without very sufficient caution and assurance for his peaceable demeanour therein. If any Member of Parliament then refuses to find such securities for his future good behaviour, he will be committed till tried, and if he should be acquitted of the charge by a Jury, who should conceive that he never wrote or published what was charged, or that what he wrote was no libel, he will nevertheless be entitled to no amends upon the score of his imprisonment, but in the first of these cases must take what has happened for being of so suspicious a character, and, in the latter, regard it as the mere political consequence of treading so near upon the borders of sedition. By the simple charge of a libel in an information by an Attorney General, all this may be brought about, and any representative of the people instantly lose his privilege of parliament, and be arrested forthwith. All the Judges, indeed, before whom this question first came, were unanimously of opinion, after taking several days to consider thereof, that the privilege of Parliament was not thus at the mercy of the King's Attorney General; but they were all of them mistaken, and, let me add, not a little aspersed and ridiculed, (notwithstanding the old and reverend intrenchment of dignity and solemnity with which their offices are defended, and the oath under which they execute them) for pretending to decide about privilege, and for presuming to construe the words of a resolution of either House, although they were legal and technical words; and in particular for so rash, so erroneous, so unworthy, and so unbecoming a determination as this was. Now, if this be so in the case of a Member of Parliament, who is a constituent part of the Legislature itself, How can any Particular think himself safe in calling in question with his pen, any action of a Minister? And, Why should he? The advantage of inoffensive speech or writing, and of absolute submission to govern-

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ment, is ſo great, that I am ſure every man ought to rejoice in ſuch wholeſome regulations. For, perhaps, a ſlight ſubſequent error of conduct might induce a Judge to be of opinion, that a man had forfeited the pledges for his good behaviour; or, at leaſt, might be ſufficient to involve him in a long and expenſive litigation with the Crown. A man once charged with writing a libel, might be eaſily caught this way, whatever ſhould become of the original proſecution on the libel itſelf. It ſeems to me to be really an excellent device for keeping the ſcribbling race from meddling with political queſtions, at leaſt from ever drawing their pens a ſecond time upon ſuch ſubjects. All the reaſons, I ſuppoſe, that wit, ingenuity, or learning, could invent in behalf of parliamentary privilege, in the caſe of the mere charge of a libel, may be ſeen, by the curious examiner into this point, collected and ſet in a ſtrong light, in the late proteſt of ſome diſcontented Peers; and yet, altho' all theſe very reaſons were urged at the time *vivâ voce*, a Majority of Members in the two Houſes, in this country of Liberty, being overcome by the ſtill more cogent reaſons given by the Miniſtry, concurred in declaring, that *privilege of parliament does not extend to the caſe of writing and publiſhing ſeditious libels, nor ought to be allowed to obſtruct the ſpeedy and effectual proſecution of ſo heinous and dangerous an offence.* It was the more neceſſary, indeed, to come to ſuch a reſolution, becauſe there was no expreſs caſe adjudged in the Courts below, wherein ſureties for the good behaviour in matters of libel had been enforced, when oppoſed by the party accuſed, although three or four caſes of private men, not Members of either Houſe, had happened within the memory of all the great Lawyers now living, where ſurety for keeping the peace had been ſtrongly inſiſted upon by the Attorney General, and refuſed by the ſuppoſed libellers, and wherein, in order to try the point with the Crown, theſe laſt, whilſt in cuſtody, ſued out writs of Habeas Corpus, and upon the Attorney General's deſiring and obtaining time, but not coming in conſequence of it, to make good the point for the Crown, demanded

demanded and obtained their liberty thereupon. In particular in the caſe of Mr. Amherſt, the author of the Craftſman, after precedents had been diligently ſearched into, and, at a prodigious expence, of both ſides, the Attorney General did not give up the matter until the very evening that it was to have been argued before all the Judges in Serjeants Inn Hall. It was too the univerſal perſuaſion at the time, that the point was not even then relinquiſhed, until it was diſcovered the majority of the Judges were of opinion that ſureties for the peace, or good behaviour, could not be demanded from any man upon the mere charge of a libel. Indeed it is the prevailing notion, at this inſtant, that the greater part of the preſent Bench are of the ſame opinion, although this cannot be poſitively known, as the matter has not been in judgment before them, and the Houſe of Lords did not think it expedient to call for their opinion upon the point. This, however, is certain, that one very illuſtrious Judge, who had himſelf been of counſel for the ſuppoſed libeller, Mr. Amherſt, was ſo far from being clear in this circumſtance, that he declared to their Lordſhips upon the occaſion, "ſhould the like point be ever mooted before him, "he would, he was reſolved, call in all the other "judges of England, and have it moſt ſolemnly "argued, and take all their opinions thereupon, as up-"on a thing of conſequence that ought to be ſettled;" and yet, his memory is ſo extenſive, and his attention ſo great, to matters of political concern, that I make no doubt but his Lordſhip ſtill retains all the precedents he formerly gathered, and very well knows of what import they are. What rendered this new parliamentary reſolution ſtill more neceſſary, was the miſconſtruction put by all the Judges of the Common Pleas (the only Court before which the ſame had ever come) upon the words of the former reſolutions of Parliament with regard to privilege. This Common Bench had conſidered the caſes where ſurety of the peace could be required, as caſes always of *actual breach of the Peace*, which they did not conceive a Libel to be, whatever its tendency

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was, or effect might be, upon other people, that is, upon those who were not the authors or publishers. But they are now set right in this matter, with regard to Parliament-men at least, for no Member of either House (as I apprehend) is at present intitled to privilege from imprisonment of his person for refusing to furnish securities for his good behaviour, when charged with uttering a Libel; whatever may be the opinion of any common man who should hereafter be so charged, and, like an obstinate fellow, make a stand, insist upon the contrary, and have the point solemnly argued in the Court of King's Bench. The Lords, suitably to their dignity, determined this question themselves, without calling in the advice of the Judges; for, though the words to be construed were legal and technical words, yet, as they were made use of by their Lordships, and related to privilege, they held it beneath the Peerage to call for Judges to expound their meaning. The Peers, therefore, adopted the resolution of the Commons; neither of the Houses conceiving they thereby broke in upon the rights of the people of England at large, in thus subjecting their Representatives to the restraints of a King's Attorney General, or gave up thereby any part of their own independency on the Crown; as not believing (I presume) that any Attorney General would be so hardy as to file Informations against Members of either House, on the suggestion of their being Libellers, and thereupon, at any pinch, or critical time, imprison their persons, merely for the sake of preventing their attending any particular vote or debate; although, perhaps, an able Attorney General might contrive so to do impunedly, *colore officii*. But such a case, in fact, is never to be supposed by any man of the world, who is thoroughly well bred.

Some late Sermons, which I have heard of, and a sensible, little, ecclesiastical piece, in one of the Newspapers (the Gazetteer) of this day, signed R. M. makes me hope and think, nay, foretel, that the Pulpit will soon lend its sacred aid to the establishment and corroboration of a perfect harmony and peace among ourselves,

ſelves, and a Loyal and Chriſtian ſubmiſſion to authority, and the powers above us. Indeed the High Church always uſed ſo to do; and, for that reaſon, has ever gone hand in hand with loyalty; inſomuch that I remember the time when a great many of the preſent Courtiers joined them in their healths; the firſt toaſt after dinner being conſtantly *Church and King*: and perhaps from thence did theſe Gentlemen ſo univerſally, at that time of day, bear the name of Honeſt Men, whatever ſuch ludicrous wags as Mr. Wilkes may have ſince ſlung out to their prejudice. R. M. is, in my opinion, very properly led, by the preſent factious diſcourſes againſt the late peace, "to lament the miſerable ſituation of a people, governed more by the caprice of party, than by that obedience to our Prince, which the principles of Chriſtianity (from an obſervance of which, we alone hope for happineſs hereafter) ſo ſtrongly perſuade us to; and which naturally prompts him to propoſe this queſtion: Whether a compliance with the Divine Will, as revealed in Scripture, if we pay any regard to it, is not more conſiſtent with our peace of mind, permanent happineſs and ſecurity, than any other principle we poſſibly can be governed by?" This Divine, therefore, makes it a part of Chriſtianity to be obedient, as I apprehend, to every Adminiſtration. Now if all Parſons would preach the ſame doctrine, ſome political, as well as ſpiritual, good might ariſe from frequent church-going. And I believe every body is ready to acknowledge, with a great Prelate, the truth and excellency of *The Alliance between Church and State*; and is therefore obliged to him for applying his epiſcopal abilities, not long ago, in drawing up a curious piece, wherein he aſſerted, that the late Peace was *adequate* to our ſucceſſes, and then cajoling an old illiterate gentleman into tranſcribing and ſending it for publication to his Great Patron, and thus ſurpriſed him at once with an inſtance both of his good faith and gratitude, of his *private and public virtue*. A learned Author, but a little while before, in writing *upon Grace, or the office and operations of the Holy Spirit*, did, very prophetically,

prophetically, in my opinion, ſay in his Preface, "*I* "*have a Maſter above, and I have one below*;" and, then diſmiſſing the doctrine of public virtue, proceed to the canon of private or "ſocial virtue," and declare, that "the moſt ſacred of all private ties, are Friendſhip and "Gratitude." Indeed, if the outſide of man be any type of his inſide, I think there is an amiable openneſs of look and Deportment in this Churchman, which ſuits his behaviour moſt exactly. In ſhort, his principles ſeem to me but the true copy of his countenance. One cannot truly deny that he ſaid of a late Miniſter, "He "had the power and diſpoſition to ſupport the honour "of his country; and that the people's following him "was not the wonderful part of the ſtory;" but it muſt be remembered too, at the ſame time, that his Lordſhip concluded his preface by recommending a "ſpirit "of true piety towards God," and thereby ſubmitted himſelf, with becoming reſignation, to the decrees of Providence; and for that reaſon, I preſume, has preferred for the preſent life, as in duty bound, his Maſter above, to his Maſter below. One need not, therefore, be an extraordinary Critic to find out the true reading of the Prelate's text, or be at any loſs in expounding the doctrine, either exoteric or eſoteric, which he holds forth. Some readers, I allow, diſſent from my interpretation, form a very different idea of his *Maſter below*; and will have it, that this Gentleman has a conſiderable influence over him at preſent; however, as their's is a malignant, unchriſtian expoſition, I ſhall follow the rule of law, and, where words are capable of two ſenſes, take them *in mitiori ſenſu*. But there is no end of ſelecting particulars from the Reverend Bench, to prove how much, by their actions and diſcourſes, they illuſtrate *public virtue or piety, and private friendſhip or gratitude*. In ſhort, they are always for recommending the bleſſings of concord. It is, I truſt, the principle of Piety which makes them concur ſo chearfully, and unanimouſly, for the moſt part, with all Miniſters, obſerving no worldly diſtinctions of perſons or parties. They live in brotherly love with all mankind, and

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worſhip alone the father of peace; or, to ſpeak more according to their own emphatical language, the Great peace-maker. And indeed, their conduct is of much force, and muſt make a ſtrong impreſſion, as it is always accompanied with a decent, holy deportment, which induces the beholder to conſider it as proceeding intirely from the true ſpirit of the Goſpel. And ſuch among the beſt men is the force of good example, that you ſcarcely ever ſee two Biſhops diſſenting from their brethren in a debate. They are ever reſigned to the will of the Great Diſpoſer of all things. Twenty-ſix ſuch men, who would not only act unanimouſly, but be earneſt alſo in their reſpective dioceſes in preaching up unanimity and true concord to all men, and in recommending the ſame doctrine to their inferior and ſubordinate Clergy, might, in my poor apprehenſion, do a great deal of good in a few years, in theſe degenerate times; and therefore it is with infinite pleaſure that I ſee an appearance of Piety ſo encouraged and countenanced at Court, and the ſpirit of the Great Lord ſo ſtrongly diffuſing itſelf, by degrees, in this kingdom. We have had nothing like it ſince the time of Charles the Firſt, excepting a little gleam, of ſhort lived duration, under Queen Anne. I do not therefore diſcommend R. M. for labouring, in this his vocation, even in the Common News-papers; as I know that devout Divines ſay, one ſhould be inſtant at all times, both in ſeaſon and out of ſeaſon, and in all places, in preaching up the healing doctrine of peace, and good will to mankind, and in exhorting all men (to borrow the words of a learned, but ſubordinate, Judge at the concluſion of his charges) to fear God and honour the King.

I cannot help remarking, that people are by far too apt, at all times, to believe amiſs of great men, and to talk, and even to write at random, to their diſadvantage. Not long ſince, Lord Chief Juſtice *Pratt* was abuſed in one of your news-papers, for having approved ſome illegal General Warrants, which iſſued whilſt he was Attorney General from Mr. Secretary Pitt's office. Now, the fact is, that he never was con-

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ſulted at all, and but once even ſpoke to, about any Secretary's warrant; and then, as Mr. Pitt avowed in a certain auguſt Aſſembly, " his friend, the Attorney, " told him, *the warrant would be illegal, and if he iſ-* " *ſued it, he muſt take the conſequence*; nevertheleſs, pre- " ferring the General Safety in time of war and pub- " lic danger to every perſonal conſideration, that he " run the riſk (as he would of his head, had that been " the forfeit, upon the like motive) and did an extraor- " dinary act, againſt a ſuſpicious foreigner juſt come " from France; that he was ready to anſwer it before " his country, if they called him to an account; and " that, in his opinion, the apparent neceſſity of the " thing, and the real exigency of the time, muſt always " be the teſt, and alone vindicate, and be the ſafeguard " of any Miniſter, who, at a criſis, exceeds the known " laws of his country." By the bye, Why this Miniſter, on account of his popularity, or this his bold defiance, ſhould not be brought before the Public to anſwer for ſuch a breach of the law, notwithſtanding his pretences of its being in the cauſe of the nation, in time of actual war againſt their moſt formidable enemy, and not for the ſake of wreaking a perſonal reſentment againſt any particular party-writer, I do not well ſee. Nothing but the preſent Miniſtry's lenity, together with a peaceableneſs of diſpoſition, ariſing from a natural firmneſs of mind, and a conſciouſneſs of real power, as well as an unwillingneſs to be ſevere, where no immediate ill conſequences followed, and where the people did not cry out, can be any thing like reaſons in my apprehenſion. Such principles muſt make every body love the heart that produces them; but I am afraid, that too great indulgence in theſe caſes is apt to breed many irregularities. It is a fact, I know, that no odious Crown-proſecutions were carried on, during Mr. Pitt's adminiſtration, by his friend the Attorney General; but that is not enough: no illegal arreſts ſhould have been made by that Miniſter, nor General Warrants iſſued in any caſe whatſoever for the ſeizing of perſons and papers without naming any body, nor even for the

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ſeizing of papers (although the perſon were named) in the caſe of a libel. Otherwiſe, the uſage of a ſecret Office may hereafter come to be alledged, by one ſet of people, for the law of the land, and be candidly admitted by others, (who affect moderation, and never directly oppoſe or condemn any thing from a Throne) to be a juſtification. Whereas all lawyers know full well, that nothing purely illegal can, in law, be juſtified; nay, the law-maxim goes ſo far as to ſay, *Ignorantia legis non excuſat*, as every man is expected to know the laws of his country: and yet circumſtances of ignorance, haſte, inattention, and cuſtom, will make any Gentleman, or Court, after conviction and condemnation, readily conſent to paſs a ſlight cenſure, and ſet a ſmall fine upon a penitent culprit; that is, in reality, to indemnify, by excuſing from puniſhment; in ſhort, to pardon, as far as may be, provided the perſon, upon whom this breach of the law was committed, be no great ſufferer thereby. A Jury, *ex debito juſtitiæ*, muſt find a man guilty, if the criminal charge againſt him be completely proved; but no Court of Juſtice, when Judgment upon the Verdict is moved for, will fine a man more than a few ſhillings, upon its appearing, from the whole of the evidence, (which, by the bye, is always reported by the Judge who tried the cauſe) that the defendant did not know he had been acting againſt law; and more eſpecially if there was a want of proper advice at hand, a neceſſity of doing ſomething, and no appearance of paſſion, violence, and precipitation in the tranſaction. The higher the ſtation of the perſon is in the ſtate, the greater will be the inſult undoubtedly; as more circumſpection and caution, and the beſt of legal information, and the moſt regular proceeding, will, in ſuch a caſe, be expected, out of reverence to the ſtate and conſtitution itſelf. In a Houſe of Parliament, after enquiry, and finding that nothing in defiance of the laws was deſigned, no more, I ſhould imagine, than a cenſure would be aimed at by any moderate Members, and no bill for inflicting pains and penalties, or articles of impeachment, be brought in or even thought of; unleſs it appeared that the cri-

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minal was too great for ordinary Juſtice, or avoided and delayed it, or elſe played with it by chicanery and ſubterfuge, that is, attempted to elude and fruſtrate the ſanctions and compulſions of a Court of Juſtice, and, by an abuſe of the law of his country, to pervert its fines and penalties by the hand of power, and the colluſion of office; inſtead of throwing himſelf upon the mercy of the Public, aſking pardon, and confeſſing his error, and thereby atoning for what he had done, for the ſtab he had ſo unadviſedly made at the vitals of the conſtitution itſelf. One need not, however, ſuppoſe caſes to ſhew that Mercy is commendable at all times, eſpecially if it ſhould chance that the perſon, principally concerned in the outrage committed, ſhould be univerſally allowed to be one of the faireſt and moſt amiable characters of the age, whatever his Attorney or Attornies might be. But, ſtrictly ſpeaking, Injuſtice cannot be juſtified, let it be committed ever ſo unwittingly, by any plea in law whatſoever. A man can only juſtify what he has done, when he has acted as the Law permits under ſpecial circumſtances; and when he can do that, he has no need of pardon or mercy. On the contrary, when he has done what cannot be juſtified under any circumſtances, although it may be from ignorance, and not from malice, yet he muſt be found guilty; but he will always, nevertheleſs, be ſuffered to give the favourable particulars of his caſe in evidence, that they may be reported in mitigation, that is, in alleviation of his fine and puniſhment to the Court. A man who has, at any time, or in any way, been miſled by fooliſh or iniquitous precedents, like ſo many *ignes fatui*; or by any, but wilful, ignorance and preſumption, is the proper object of pardon with the Crown, or of mercy and very ſlight puniſhment with the Court of King's Bench; where too he will never fail of meeting with it.

Excuſe this long diſſertation on a very plain point: for, according to my obſervation, a certain truth is not always ſufficiently attended to, namely, that the manner of doing a thing is oftentimes of more conſequence than the thing itſelf. I do not venture to ſay thus much, be-

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cauſe Mr. Pitt is out of power; I ſhould have ſaid the ſame, had he been in. I am not in the intimacy, much leſs in the pay, of the preſent or any other adminiſtration. In ſhort, I am of no party. A man may think very differently from the great men of either ſide, upon many important points; and yet have an extremely good opinion of the integrity of ſeveral who are in, as well as of ſeveral who are out of place. Their actions and management are alone the object of diſintereſted ſpeculations; and great allowances are, I know, to be made for the miſtakes, obliquities, and even injuſtices, of miniſterial, political conduct in any great kingdom. A Jobb, or even the waſte of public treaſure, is a temporary, and much leſs evil, than any violation of law that lays the foundation for arbitrary rule, and ſaps the conſtitution to its bottom. In ſhort, to uſe the expreſſion of a conſummate Lawyer upon the ſame ſubject, "In "ſuch extreme caſes I like to ſpeak out; and what I "am afraid of, is the Power of the Crown." It is the conſequence of eſtabliſhing dangerous precedents, that is ſo much to be dreaded, when Secretaries of State depart from the Laws to attain a favourite point, and the King's Attorney General either ſets up a pretended prerogative for a defence, or elſe deviſes means for the ſmothering or defeating of all proſecution: In a word, when the ſervants of the Crown uſe the utmoſt of their abilities, and their power of office, to prevent and to baffle the moſt regular purſuits of Juſtice, and thereby exceedingly aggravate the original offence. If an alarming practice has been once brought to light, and enquired into, and not condemned, although clearly unwarrantable; it will look to poſterity as if, upon examination, it were found to be legal, or, at moſt, but dubious. This, therefore, becomes the great grievance; for otherwiſe, perhaps, no indifferent man would care at all for the fate of the perſon who occaſioned the queſtion. So common, indeed, is it for mankind to err without deſign, in the exerciſe of legal power, that, by a late act of parliament, all Juſtices of the Peace have a month, after notice of their having abuſed their

authority, to make or offer amends to the party injured, before he ſhall be at liberty to bring any action for the recovery of damages. Now Great Miniſters are hardly more knowing in the Laws, or more cautious in the execution of their offices, and might therefore very well expect a ſimilar indulgence. The practice, in truth, in the Secretary of State's offices, has always been to aſk no advice at all, but that of their own Law-clerk, and to iſſue theſe General Warrants as occaſion required, and to take the form from any precedent that happened to be among the papers of their office. And a State Law-clerk knows even leſs of the law than an Attorney, or any Solicitor to the Treaſury. However, if any perſon within the laſt deſcription, taking upon himſelf to do the legal part, ſhould not only once execute an illegal warrant, but ſhould a ſecond time, and ſome days afterwards, when it was thought proper to take up other people, upon being deſired and directed to make uſe of freſh warrants for the purpoſe, officiouſly and arbitrarily ſay, "No, no, the old will do well "enough;" and ſhould thereupon, without any regard to decency, or the appearance of law, thus outrageouſly violate the ſubject, with old proceſs *functus officio*; I ſhould imagine he ought not only to be diſmiſſed from his employ by any Miniſtry, but be expelled from every ſociety or aſſembly of which he was a member, and be branded beſides by the Public; let him be Attorney, Solicitor or Counſel, or half one and half the other, and perjured or not, at Weſtminſter or Guildford, either recently or many years ago.

With reſpect to the Warrants publicly complained of, it was notorious, and muſt be a matter of ſatisfaction to every body, that not one of the preſent Miniſtry attempted to juſtify the legality of them; they knew too much of the law from their early ſtudies, and had too much good ſenſe to attempt any ſuch thing. In reality, their patriot hearts melted within them, and by degrees diſcloſed and brought forth their ſentiments to the contrary; excepting however the perſon vulgarly ſtyled, in Law-Latin, *Diabolus Regis*, who ſaid, "He "had

"had formed his opinion, but would keep it to him-"self," that nobody ſhould be the wiſer or the better for it; imagining, I preſume, he ſhould act out of character, in that place, by doing otherwiſe; or ſurely the politeneſs of his diſpoſition would have led him to indulge the Commons of England, when ſummoned and met as the grand inqueſt of the nation expreſly for inquiry, conſultation and advice, with the beſt of his thoughts and judgment upon the ſubject. The great Lawyers and Advocates for the Crown, the ableſt Council and Doctors, even joined to amend the queſtion firſt propoſed by the oppoſition, and altered it again and again, in order to render it more explicit, inſomuch, that every by-ſtander at firſt imagined they intended to vote for it alſo; but, in fact, the whole of this their dubious and ſeemingly perplexed proceeding, aroſe from their anxiety for a full and fair diſcuſſion of the legal validity of General Warrants, to the end, as I conceive, that all the world might ſee (as indeed they did at laſt) that nothing at all could be ſaid in ſupport of them. No end could be more laudable, or more perfectly anſwered; for, after the utmoſt reſearches, no one caſe could be found by the moſt learned, diligent, and laborious inquiſitors, wherein ſuch a warrant had been adjudged legal. By *Magna Charta* (the Great Charter of Engliſh Liberty, ſo much talked of, but ſo little read) a Succeſſion of Kings, with the advice of their Barons and Biſhops, and wiſe and great men in Parliament, declare and promulge to all the people of England, *Nullus Liber Homo capiatur, vel impriſonetur, aut diſſeiziatur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlegatur, aut exulet, aut aliquo modo deſtruatur; nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terræ. Nulli vendemus, nulli negabimus aut differemus rectum vel juſtitiam.* How, therefore, could any but an illiterate and unthinking man conceive, that in time of perfect tranquility both at home and abroad, a General Warrant which named nobody, could be deemed *Lex Terræ* or *Judicium Parium*, ſo as to authorize the ſeizure and

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close imprisonment of a *Liber Homo*, without some notorious change of the constitution in this capital point by King, Lords, and Commons? A warrant *truly* that commissions three or four common Messengers to take up the Authors, Printers, and Publishers of the Libel, and bring them together with their papers before a Secretary of State! Could this be Law, which but to state in a country, not governed by will or pleasure, is to refute; three or four of these Greyhounds, or ordinary Messengers, having nobody named in such warrant, might by virtue thereof, have taken up ever so many persons in the kingdom, because, forsooth, they suspected them to have a hand in the publication! without any information upon oath, or shadow of positive proof; and have then hurried them away directly to the Issuer of the Warrant, who might thereupon have committed them all to the closest confinement, out of possibility of access to any one friend whatever.

Even if somebody had been named in the warrant, must there not be an Information upon oath, of his being Author, Printer, or Publisher?

And if somebody were named and alledged to be charged upon oath with being Author, Printer, or Publisher of a Libel, could his Papers be seized? Since the time of Algernon Sidney, and the reign of the last Stuart, every man that has the faintest notions of Law or Liberty, must know the position *Scribere est agere*, has been condemned, and that the mere writing and leaving in one's own study, any discourse whatever, is not criminal, it being no act which the Law takes notice of; for any man is at liberty to think, and to put what thoughts he pleases upon paper, provided he does not publish them. In the case, therefore, of a Libel, this inquisitorial power of ransacking papers will not be endured. It would lead to the seizing of a man and his papers for a libel, against whom there was no proof, merely slight suspicion, under a hope, that among the private papers of his bureau, some proof *might* be found which would answer the end. It is a fishing for evidence, to the disquiet of all men, and to the violation

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of every private right; and is the moſt odious and infamous act, of the worſt ſort of inquiſitions, by the worſt ſort of men, in the moſt enſlaved countries: It is, in ſhort, putting a man to the torture, and forcing him to give evidence againſt himſelf. For, if a paper be found in any houſe, in the hand-writing of the Maſter, which ſhould contain the words of the printed Libel, there is no doubt but any Jury, upon proof of his hand, would find him the author; and this ſort of evidence is permitted in matters of Miſdemeanor; although, ſince the reverſal, by Act of Parliament, of Algernon Sidney's caſe, that is, ſince the dominion of the Stuarts and their Judges, no proof from ſimilitude or compariſon of hands, notwithſtanding the criminal writing be found in the cuſtody of the perſon charged, has been deemed admiſſible evidence in capital caſes. Nay, if it were once eſtabliſhed for law, that, on the mere charge of a Libel, by the Attorney General's filing an Information *ex officio*, a Secretary of State might grant his warrant for ſeizing the perſon thus charged, together with his papers; it would ſoon become uſual, under the pretence of better keeping the Peace, to exerciſe this power in very ordinary caſes, and without any heſitation or ſcruple: and, by degrees, men known to be in oppoſition to the Miniſtry, or in intelligence with thoſe who were, would have their ſtudies rummaged, whenever a galling or abuſive pamphlet came out, publiſhed, perhaps, on purpoſe, under a frivolous pretence, that they were rumoured to be the writers or editors of it; but really and truly, for the ſake of getting at private correſpondence and connections, and for the buſineſs of diſarming oppoſition, or defeating impeachment. The Earl of Danby's ſeizure of Mr. Montagu's papers, will ſhew what may be the true motive to ſuch a ſtep. And, if the *charge* be a libel only, it matters not with what additions you endeavour to brand it, whether ſcandalous, falſe, ſeditious, or treaſonable: call it what you will for the ſake of exciting the greater deteſtation, it is ſtill, in fact, but a Libel, and you *inform* againſt it merely as ſuch. If you mean, that it ſhould be treated as High

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Treaſon, you muſt *charge* it as High Treaſon; as was the caſe of reading a paper on Epping Foreſt, to a multitude of people, exciting them to riſe and take up arms againſt the Government itſelf; than which, no ſtronger overt act of High Treaſon can well be committed. No lawyer, however complaiſant, would talk of this laſt as the caſe of publiſhing a Libel only, no more than in ſpeaking of a Rape, he would call it an aſſault, or, in ſpeaking of Murder, he would ſtile it a Battery, (although, without doubt, *omne majus in ſe continet minus)* unleſs he were talking to unlearned people, who knew nothing of the nature or ſpecies of crimes, after ſome premeditation, with a view to deceive them, and to induce a belief, or, at leaſt, raiſe a doubt at the time, that a man might be equally hanged for either. Now, in the caſe of High Treaſon, ſo dangerous to the being of the whole ſtate, it may not, perhaps, at particular junctures, be improper to ſupport, or indemnify at leaſt, even Secretaries of State in the ſeizure of papers, and of every thing elſe, however illegal, that may poſſibly ſerve to a diſcovery and conviction of the Traitor. The doing of what may tend to dethrone a King, is of conſequence to every individual; but the dethroning of a Miniſter is not quite ſo momentous a matter.

And, after all, if in the warrants the perſons to be ſeized had been *named*, (and not left conjectural to the diſcretion of the King's common Meſſengers;) and it had been alledged, that they were *charged upon oath*, and there had been *no direction to ſeize papers*: under what law, or colour of law, could they be committed to *cloſe* confinement and impriſonment *(arcta cuſtodia)* upon the *charge* of a *Libel* only? Another very great and important point for a conſtitutional enquiry! Is a man, charged only with writing and publiſhing a Libel, to be deprived of his liberty at once, and ſo ſhut up in gaol, that no friend is to have it in his power to come near him? Will not common confinement be ſufficient cuſtody in ſuch a breach of the Peace, when charged only, and that *ex officio*, and before one tittle of proof be given, and this too in the caſe of one of the Repreſenta-

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tives of the Commons of England? I cannot help ſaying, I am ſurprized that this laſt point has never been agitated; for it ſeems to me to be of very great conſequence. I am ſure it was not owing to the Miniſtry; for they appear to have been very ready and deſirous to have agreed to any queſtion, that might tend to the thoroughest diſcuſſion of every part of this vexatious caſe, for their own information as well as for the benefit of the public; and it is this perſuaſion which induces me to throw out my private and impartial thoughts upon the ſubject. It is under ſuch mild, intelligent, and inquiſitive adminiſtrations, that theſe great conſtitutional points can alone be fairly diſcuſſed. Many of my difficulties have been very ſatisfactorily entered into, but that of the cloſe impriſonment has not, I think, been yet examined.

As to the truth, candor, and legality of the return to the firſt *Habeas Corpus*, by thoſe who had ſeized and carried off the Libeller and his Papers, namely, *that they had him not in their cuſtody*, having juſt before (and after being told that a *Habeas Corpus* was coming for him) hurried him away into other cuſtody, in ſhort, to the Tower, I do not mean to put any queſtion; although, perhaps, a Court of Law might not hold this to be a ſatisfactory reply to a peremptory order for bringing the body of the Perſon ſeized, together with the cauſe of his ſeizure; becauſe, if it were, every *Habeas Corpus* might be eaſily eluded, by only changing the cuſtody of the Priſoner from time to time, *toties quoties*. A Court might expect, therefore, to know how he was diſpoſed of, and not to be dodged at this rate, in a matter where the liberty of a Free Man was at ſtake; but deem ſuch an anſwer or return evaſive, fraudulent, and a deliberate mockery of Juſtice. Whether the *cloſe* priſoner of ſtate was treated well or ill by his gaolers, is of little or no moment; and "the aſking "him, the next morning, whether he choſe to have a "clean ſhirt, ſhoes and ſtockings," or even *his ſhaving things*, is too ridiculous to be noticed; the ſole queſtion here being, By what *right* or *colour* of law he was or-

dered to *close imprisonment*, and debarred from the access of his own friends and servants? and not what personal reparation should be made to him, for the bodily injuries he had sustained thereby. But, as I said before, I shall not ask any questions upon this head; although the whole of the transaction is very fruitful of points from the beginning to the end, in every step of the proceedings, and of important points, which nearly and intimately connect with the Constitution, and touch the liberty of every man living under it.

The Representatives of the Commons of England took up the consideration with spirit, and the gre[illegible] men in office, to give them their due, expressed a natural solicitude through the whole progress of the enquiry. When the illegality of the Warrants was made clearly to appear, and any man was defied to support their lawfulness; and it was even said, that it would be an insult upon common sense to pretend so to do; the Ministry, very consistently, moved to adjourn, declaring the House was no place for the determination of points of Law, (unless privilege, I presume, were connected therewith;) and thereupon the House did adjourn, in order to let matters stand upon the old footing. Indeed, out of compassion to two worthy, but ignorant Members, who stood accused for executing such illegal Warrants, they came to a resolution to justify and acquit them, under the special circumstances of the case; and, perhaps, even this they might not have done, had not a great, but moderate Lawyer, not long before in high office, and then appearing as it were in opposition, said, he "candidly "thought, all things considered, the circumstances "would amount to a justification." It is otherwise not improbable the present Ministry, so open were they to conviction, would have found them guilty (that is, of acting contrary to the Laws, in executing a Warrant fundamentally illegal) upon this well-known principle, so much before dwelt upon, that *nothing illegal in itself can be justified*, but have immediately afterwards declared the practice of their office, and the circumstances of their case, to be so strong a plea in mitigation of damages,

mages, that they thought it the propereſt caſe in the world for mercy; and have therefore excuſed them from all ſorts of puniſhment. But ſuch was this candid and much-reputed Lawyer's influence and weight with both parties, at that juncture, that they all ſubmitted implicitly to what he had only dropped for law. Nay, the Miniſtry even offered, at laſt, to bring in a bill for ſettling the power of Secretaries of State for the future, upon a hint of the propriety thereof, that fell from the ſame candid Lawyer. And, by the bye, How could a party, at whoſe head was a chief, that acknowledged he had, when in office himſelf, knowingly iſſued an illegal Warrant, becauſe he imagined the ſafety of the Commonwealth required it, reject the indulgent offer of a bill for eſtabliſhing for ever ſuch a power in Miniſters, under ſome few conditions, to be guardedly worded? Nay, when ſuch a Bill was actually moved for, by a man as much an independent as any in Weſtminſter, a grave and learned Privy Counſellor, who diſtinguiſhed himſelf about the years 1743, 1745, and 1746, as much in behalf of the Proteſtant Religion as of the Revolution, in ſupport of all Loyal Britons, ſometimes as a Counſel, and ſometimes as a Juſtice of Peace; but never more conſpicuouſly, or intrepidly, than by *preſenting* the *Aſſociation*, in the year 1745, as dangerous and illegal, as an actual breach of the peace, and as coming very little ſhort of Treaſon itſelf; the perverſe and untoward Minority, inſtead of ſhewing any reſpect or deference to the perſon of this wiſe Senator, loyal Engliſhman, and faithful Counſellor, though the ſolemn oracle too of a reſpectable body that had ſupported the late Miniſtry of Mr. Pitt throughout, expreſſed their contempt of his propoſition, by leaving the Houſe, to a man. It is true, the worthy Knight ſpoke with a good deal of phlegm, and an air of indifference and coldneſs, but that was always his wonted manner; and as to his not being ſeconded warmly, and in downright earneſt, (as it is called) that proceeded, as I gueſs, from the Miniſter's not chuſing to draw and word a bill of ſuch conſequence, without the concurrence of thoſe who had talked ſo

much and ſo loudly upon the ſubject; not relying altogether, perhaps, even upon the candid Lawyer's attendance, although, in his uſual qualifying way, he had dropped, that "a Bill might be drawn with ſuch "clauſes, and ſo worded, as would anſwer the purpoſe, "and that he would readily lend his aſſiſtance therein, "ſhould ſuch a one be moved and brought in, and a "committee appointed thereupon." The Miniſtry, moſt certainly, were not ſuch poor politicians, as merely for conſcience-ſake to force on a bill of ſo nice and difficult a compoſition, and ſo liable to be called, by the malevolent, *An Act for giving more power to Miniſters* notwithſtanding the largeneſs of their Majority. After being heartily ſlapped on one ſide of the face, obſtinately to hold out the other to the like treatment, would be, now-a-days, a ſtrange kind of primitive goodneſs. By the mere offer of ſuch a Bill, (to borrow the expreſſion of a certain talking Alderman) *liberarunt animas ſuas.* And who can blame men, in times of clamour, for going no farther, and for a little worldly attention? Doubtleſs, they would be content rather to lie under an undeſerved imputation of not being in earneſt when they talked of a bill, and of their throwing it out merely as a tub for the Leviathan of oppoſition to play with, than enter into another long and hot field of diſputation and wrangling, the end of which is not always to be foreſeen; when at the worſt, they are ſure of having an acquittal for themſelves, from the experience of what is paſt, whatever they do. They are not like ſome Miniſters, who court a renown for their eloquence. They are very far from oſtentation or outward parade, and talk modeſtly; yet they can do the ſtrong thing, when neceſſary, as much as other people: *Suaviter in modo ſed fortiter in re.* But is it not aſtoniſhing, that the Great Dictator, and his immediate followers, ſhould ſhew a diſlike to ſuch a ſtatute or ordonnance as this, which might, in future, be a ſhield of defence for any thing ſo bold a Miniſter might venture to do, ſhould ſuch another at any time ever ariſe? Perhaps a Majority in the Houſe of Commons offering ſuch a bill, may not

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ſoon be ſeen again; for we all know, that when the Peers had framed ſuch a bill, paſſed and ſent it down in 1692, the then Commons rejected it, "thinking thoſe "limitations gave a legal power to commit, in caſes "where they were obſerved; whereas they thought the "ſafer way was, to indemnify the Miniſtry, when it "was viſible they did not commit any but upon a real "danger, and not to ſet them any rules: ſince, as to the "committing of ſuſpected perſons, where the danger is "real and viſible, the public ſafety muſt be firſt looked "to, and ſuperſede all particular laws." I ſay, therefore, it is a rare thing to find a majority of Members in a Houſe of Commons diſpoſed to grant ſuch a bill; and ſuch good-humoured ſeaſons are, one would think, to be caught at, and not ſlighted. It ſeemed to me a wonderful perverſeneſs in the Minority. In ſhort, the great perſonage who led them, would rather, I find, put himſelf upon his country, and run the riſk of their diſapproving what he had done on a particular exigency, than arm his ſucceſſors in office with new powers, at preſent unknown to the laws, which might warrant them at any time in ſtepping out of the ordinary road of Juſtice, whenever they themſelves might judge it proper ſo to do. And yet, ſurely, we can have no ſettled conſtitution without ſome ſuch bill. But from hence it is plain, that nothing will pleaſe people who are thoroughly froward, except it be ſomething of their own chuſing, and that too exactly in their own way. The Minority muſt therefore thank themſelves, for having obtained nothing at all by their buſtle.

Excuſe this long deviation to a collateral matter, ſpringing, indeed, from my main point, but making no part of it, and let me return to my original ſubject, I mean the Doctrine of Libels. Now, to be ingenuous and wholly impartial, without reſpect of perſons, I muſt confeſs I recollect one thing that calls in doubt the legal knowledge of a certain very popular Chief Juſtice, and that is his ſaying, when acting as Attorney General too, upon a motion in the King's Bench, for an Information for a Libel againſt the Author of *The Sixth Letter to the*

the People of England, who was then prosecuted in the ordinary way, for the grossest of abuse upon his late Majesty, his family, and the Revolution itself, " What " I urge to the Court, is only to shew there is reasonable " ground for considering this publication as a libel, and " for putting it in a way of trial, and therefore it is I " pray to have the Rule made absolute; for I admit, " and your Lordship well knows, (addressing himself to " the excellent Lord who still presides there) that the " Jury, in matter of libel, are Judges of the Law as " well as the Fact, and have an undoubted right to " consider, whether, upon the whole, the pamphlet in " question be or be not published with a wicked, sedi- " tious intent, and be or not a false, malicious, and " scandalous libel." * It is true the noble Lord at the head of the Court, did not then contradict Mr. Attorney, and seize that opportunity of laying down authoritatively the law upon the chapter of Libels; but I presume that, out of respect to the Crown, he was not willing, at that time, to put down its principal law-officer, in his own Court, in the face of the King's Bench; or perhaps there were other and better reasons which restrained his Lordship, or rendered it at that instant not so convenient or proper.

By the bye, it is a great happiness for the Police of this realm, and for the reformation of manners, that this same popular man's lot has carried him to preside over Common Pleas only. Juries are not quite so likely to err in mere disputes of *meum* and *tuum*. But how would Crown-Prosecutions have been managed in such hands! Nothing, for certain, can tend so effectually to the preservation of good order, domestic peace, and true loyalty, as the prevention of all invidious writing touching administration, by proper conviction and punish-

* The reputed Author of this very piece was afterwards found guilty, and punished accordingly, to the satisfaction of every body at the time; but I have purposely avoided naming him, because it is the common report that he has at present a good pension: And there must therefore be some mistake in the matter, and I am unwilling to relate any thing that is not a notorious fact.

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ment of the Authors as libellers, that is, under the guise of law; and this can never be effectually done, if men of ordinary life and downright underſtandings are to paſs their own judgment of the matter, and that judgment is to be deemed the law of the land. For, I don't know how it happens, but the fact undoubtedly is, the generality of people in this country are much diſpoſed both to laugh and to rail at Adminiſtration, and not only to forgive, but to encourage and reliſh every ridicule, lampoon, or ſatire, publiſhed concerning them; inſomuch that news-papers principally ſubſiſt by the ingredient of abuſe, and are read in every county of England with eagerneſs, and to the infinite diſcredit of the Great Men in Office. They cannot be brought eaſily to think, that any thing is ſaid more than is merited, or that there is any harm in drawing the curtain, and diſcovering a Miniſter's moſt ſecret works; in the expoſing of his foibles or his iniquities; or that the conſtitution is hurt by writing of one man into, or another out of place. They will not be perſuaded, that ſuch publications are deſigned as ſerious attacks upon the Throne itſelf, or to overturn the preſent Parliamentary eſtabliſhment, and therefore will not condemn ſuch writings as libels. And ſo far are they from underſtanding the law about this matter, that they cannot conceive how any man can be guilty of publiſhing a libel on the State, when he utters no more than the truth. In ſhort, their wits are not ſubtile enough for the diſquiſitions and diſtinctions that are abſolutely neceſſary for the coming to ſuch a concluſion. Now, in ſuch a common-wealth, the apprehenſion alone of what an ignorant or wilful Jury may do, if left to judge for themſelves, is enough to make any man living, who really reveres a throne, turn pale! It is ſhocking to every learned and dutiful ſubject, educated in the true principles of Britiſh loyalty, and a hearty lover of his Church and King, let who will wear the Crown!

Indeed, I have heard another thing, imputed of late to the ſame popular Chief Juſtice, and ſo well atteſted, that I ſhall venture to report it again, eſpecially as it is in

in a point that clashes a little with somewhat which I have before advanced, and that is, that he does not seem to be fond of controlling Juries by the granting of new trials upon every occasion, rather considering the practice as novel, and not much to be favoured; and that when the case was cited, wherein the great Law-authority I have before alluded to, spoke in disparagement of trials by Jury, he seemed quite surprized, and said, with a look of disapprobation, "Why do you cite "such cases before me? I have been bred up in other "principles, and am now too old to change them." This may be misinformation, and for my own part I hope it is; but, if it be true, I would with great deference presume to ask, Why we should not grow wiser than our forefathers in law, as well as in other parts of science, after repeated experiments; and, as new lights arise, correct our old prejudices, and even our old constitution, where expedient or necessary? In the name of common sense, what gentleman would not rather have his cause tried entirely by men of science, (I mean the Judges who are named by the King at the recommendation of the Ministry, that is, of the first people in the kingdom) than by illiterate country fellows, common shopkeepers, or aukward country gentlemen, who may probably never have seen a Court? How can such men judge of any fact, relative to property, as well as those that have studied the art of reasoning, and been conversant in books and good company all their lives? And, in Truth, if I may be excused for hazarding my own opinion in this matter, however singular it may seem; when once we have got rid of Juries in concerns of property, we shall soon come to do without them in concerns of life and limb: And till then we shall never have the Crown-trials properly managed, let Judges take what pains they will, and state or sum up the evidence as they think good. For, as the Law now stands, let a Juror be ever so inflexible to the direction of a Judge, or adhere ever so obstinately to his own opinion; it is not in the power of that Judge to discard him, and have another sworn; nor even, when the next trial

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comes on, to " order the Officer, who calls the Jury, " to paſs him over if his name ſhould again be drawn, " and to take care, that he be never more upon ano- " ther Jury." Nevertheleſs, let other peoples notions be what they will, I ſhall always think this to be a power much wanted by a Judge, at leaſt by a Chief Juſtice; as I am perſuaded, that the higher men are in the world, the greater will be the value they will ſet both upon ears and life. All important Crown-proſecutions would then be conducted in the beſt manner, according to the will of the Chief Juſtice of England, who is frequently a Peer himſelf, and of great weight with the Miniſtry; is always a Privy Counſellor, ſometimes of the Cabinet, and entitled to the ear of his Majeſty, and of courſe infinitely above all prejudice, and every thing elſe that is low and vulgar. Under ſuch direction, no man would be found guilty, or loſe his life, from error or ignorance. And the Lawyers hold it for a maxim, that the King is intereſted in the life and health of all his ſubjects. In my humble opinion, there is ſome ſmall ſtrength in theſe arguments! To ſay nothing of the diſagreeableneſs, tedioufneſs, trouble and precariouſneſs, of all trials by Jury, compoſed of nobody can tell whom.

I ſhall not wonder to hear myſelf traduced for groſs partiality to the preſent Miniſters; but although men are often miſtaken about their own appearance, I flatter myſelf that I am as impartial as any writer againſt the Adminiſtration; and I hope the candid reader will not think I ſtrain any thing in their favour, altho' I profeſs myſelf inclined to have the world ſee how much this kingdom is obliged to them, in the particulars which I have touched upon. The current of News-papers is too apt to be ſet ſtrongly againſt every Miniſter for the time being; and therefore it is but common juſtice to ſpeak what one thinks in their favour. I have refrained alſo (as far as I can judge of myſelf) from aggravating the features of the oppoſition, where obliged to take notice of their proceedings, and have by no means exaggerated their faults, or even mentioned them where I could well avoid it. On the contrary, I have vindi-

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cated them from aſperſion, when truth would permit it. I little expect, therefore, to pleaſe the zealots of either ſide, but, I truſt, the ſober part of both will attend a little, to what an obſcure but impartial man may candidly offer to their moſt ſerious conſideration. The civil government and the interpretation of the laws and charters of the land, ſhould ever be attentively regarded by all moderate men, let the factious and ambitious of either party ſtruggle, as much as they will, about who ſhall be foremoſt in favour at St. James's, or how to get the beſt place. A trick, a fraud, or a jobb, is nothing more than a tranſitory evil; but a ſolemn deciſion on any conſtitutional point, is what will be either a laſting ſecurity, or an irreparable infringement, of the liberties of us and our poſterity to the remoteſt generation. When a Miniſtry abſolutely do nothing, no man ſhould call them raſcals; but when they do what is praiſe-worthy, every man ſhould be glad to ſtand forth in their commendation and ſupport. I dare not, however, like *A Loyal Briton*, in the Gazetteer of the 21ſt and 26th of this month, praiſe the moderation of the preſent Adminiſtration, merely becauſe they have not proceeded ſo far as Q. Elizabeth would have done, who (according to this writer) in the plenitude of her arbitrary ſway, inſtead of gently driving Mr. Wilkes into exile, by the ſoft methods of proſecution both within doors and without, above ſtairs and below, would have let us "ſeen "him, before this, dangling by the neck at Tyburn, "and perhaps the Lord Chief Juſtice, that declared her "Secretaries Warrants illegal, by his ſide." Now, altho' I moſt ſincerely rejoice in the plenitude of power, which, according to this writer, the preſent Miniſtry enjoy, I dare ſay, however, they do not deſire this ſort of comparative merit may be alledged in their favour. They are fully ſenſible that Mr. Wilkes, as one of the repreſentatives choſen by the people of England, ſhould be treated with decorum, and a Judge (ſo long as the laws continue of any force) with great reſpect, where he acts in his proper department, and concurs in opinion with every other Lawyer of the Realm, either on

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or off the Bench. Especially as no man had the smallest reason to surmise there ever was the least concert, connection, or even acquaintance between that profligate libeller, and this great lawyer. Indeed, how different too their conduct! The one, uncalled upon, wantonly and officiously wrote of every body and every thing, as his own lewd fancy happened to comment upon the occurrence or anecdote of the day. The other, in his high and reverend province, in pursuance of his duty, and agreeably to his oath, pronounced his opinion upon a matter of law, brought judicially before him, with a gravity and weight equal to any of his most venerable predecessors, becoming his function, and to the universal approbation of every lawyer, and of every man in England. Moreover, the Council for the Crown could, had they not acquiesced in the Chief Justice's opinion, have very easily brought the same matter in judgment before the Chief Justice of England himself, nay, even in the last resort, before the House of Lords. Another well-known truth, which, probably, the *Loyal Briton* has not yet heard, is, that Mr. Pitt himself neither has, nor ever had, any more connection with this desperate libeller, than any one of the blameless great men at present in power. I will likewise tell him one other thing which he little suspects, and that is, so candid are the Ministers now-a-days, that one of the shrewdest and wittiest among them has publicly declared he does not dislike a little opposition, and thinks there is no harm at all in being *rubbed now and then with a little salt*; so that, after all, the Gentleman before-mentioned only offended (as I ween) by the quantity he put in his pickle: It is therefore most evident, it was always very far from this Ministry's desire to have any one creature hanged for such a political mistake. Besides, they know that we Englishmen, being unaccustomed to the commission of crimes against our Sovereign which are punishable with death, are not sufficiently familiarized to the gallows, to consider the *dangling* there *by the neck* in a humorous light. Indeed, by the strangeness of this attempt to wit, I should imagine the *Loyal Briton* no native of England,

land, but rather of an adjoining country, as notoriouſly barren of wit, humour, and poetry, as it is of every other pleaſure of the imagination; being a ſoil where the inhabitants, from the coldneſs of the climate, conſider every ludicrous attack upon a Miniſtry, like thoſe of *The Teſt* and *North Briton*, with a ſort of chill, or ſober earneſt, with us not unfrequently termed dullneſs. Moreover, from the name or title which my brother writer has aſſumed, I ſhould ſuſpect him to be a foreigner; for ſome how or other, though his meaning may be right enough, yet it is not expreſſed according to the genius of this nation, or the true Engliſh idiom. I do not ever remember to have heard of any Engliſhman that called himſelf a *Loyal Briton*, although I have known many who denominated themſelves good Subjects, and ſome Patriots: It ſounds to me like a ſort of tranſlated Engliſh, and has, in ſhort, the air of an appellation, which ſome foreigner has taken upon himſelf to do into Engliſh, and written, perhaps, at *The Britiſh* Coffee-Houſe, before he was well acquainted with our laws, our conſtitution, or our tongue. He ſays too, that whether a Prince among us perſecutes Papiſts or Proteſtants, it is exactly the ſame thing; ſo that this writer, as yet, really differs from us in his notions both of Church and State. It cannot be long, I think, ſince he has taken the oaths. There is, however, I muſt confeſs, one faſhionable writer of late, Mr. David Hume, the Hiſtorian, who is of the ſame way of thinking; and I am told, that the moſt ingenious of the preſent Tories, who take to reading, find in him many paradoxes equally amuſing and convincing. He is, to ſay the truth, a very agreeable writer, and poſſeſſes a ſtile not inferior to that of Father Orleans in French, and is, I ſuppoſe, for that reaſon, ſo much recommended to the peruſal of young men of faſhion that are entering upon the world. He and the Father both prove to the reader, that the firſt of the Stuarts had a great deal of good-nature and learning, wrote very well, loved peace diſcreetly, and followed the right politics for this nation. In ſhort, that the religion and conſtitution changed in this country by accident, and

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that fanaticiſm heated the brains of the inhabitants ſo ſtrangely, that they were never in their right ſenſes, (and therefore quarrelled about forms of government and religion, which are mere whims in themſelves) and thereby became the cauſes of infinite diſtreſs and miſfortune afterwards. Theſe very material facts and poſitions are always ſupported by ſome ingenious example, or elſe by ſome quotations from private pamphlets and enthuſiaſtic religious publications, hitherto unnoticed, genuine, but obſcure productions of the time, which Mr. Hume has had the good fortune to meet with, and from thence to deduce the true principles of the great actors in thoſe days, as well as the ſenſe of the nation, in oppoſition to the famous authors and remarkable memoirs, journals of parliament, and private letters of conſiderable men, whereon other hiſtorians have very miſtakenly relied. It is in reality a performance new, entertaining, and ſingular, and will reconcile any man to the reigns of the Stuarts, who reads it free from the prejudice of other hiſtories; that is, who knows no facts but what are related in Mr. Hume, or any other relation of them, and is void of any political or religious principles relative to this conſtitution; in ſhort, whoſe mind is free from the ſhackles of previous information. It is amazing what a new light he has thrown upon every thing; nay, one need but read this Author to be ſatisfied, that we are miſtaken in our opinions of all the people of thoſe times, both as to their hearts and their underſtandings. In particular, as to learned men, that Sir Francis Bacon was not half the man we take him for, being exceeded by many foreigners in many reſpects as a philoſopher, and that he was withal a moſt miſerable writer; and as to the celebrated *Defenſio pro Populo Anglicano* of Milton againſt the Royaliſts, it was a ſcurrilous, illiberal, and contemptible performance. In ſhort, from a few particulars and paſſages of lives and books, he eſtabliſhes univerſal poſitions with reſpect to the merit and demerit, and general caſt and character of an author, the whole life and conduct of a man, and the tenor of a reign. Nothing can be more ſatisfactory.

tory. My Lord Clarendon, a good royaliſt, was however an Engliſhman, ſubject of courſe to the national prejudices of one, and ſaw every thing, therefore, with the eyes of an *Engliſh* Tory; but Mr. Hume is a foreigner, bred under other laws, and tho' a royaliſt too, yet he ſees things through very different mediums, and therefore judges more ſoundly, and, upon the impartial ground of his own country, lays on the true and proper colouring. In order to ſee what different writers they were, and how differently they draw characters, one need only take one of thoſe drawn by Lord Clarendon, with his ſubtile delineation of every feature, and compare it with the ſlight and general (but maſterly) touches of Mr. David Hume. In my humble opinion, one need only look at this ſtrong characteriſtic of an Hiſtorian, to form a very juſt idea of the reſpective abilities of theſe two writers of the actions of the Stuarts; and as they are both equally loyal and good men, altho' one of them lived in the times whereof he wrote, and was of the Cabinet, and the other 100 years afterwards, and is but juſt emerged from the circle of his private country friends, and now no more than a private Secretary to an Ambaſſador at a foreign court; yet, as he is a philoſopher by diſpoſition, and therefore more knowing and more impartial than a mere Stateſman, I think I do no injuſtice to any party or nation, by making the compariſon of the one with the other. And having thus pitted theſe two Royaliſts, I muſt reſume my expoſtulation with the *Loyal Briton*, to tell him, that I really do not recollect when it was that Queen Elizabeth made any promotions of Miniſters, diſgraced any author of national conqueſts, or concluded any peace, that occaſioned ſuch writings or libels as drew down the vengeance of the Crown upon them; although, I believe, Queen Anne, in more recent times, did ſomething like it: but as he has probably read no Author of Engliſh Hiſtory beſides Mr. David Hume, and his pen has not got down ſo far, the *Loyal Briton* may, perhaps, find ſome inſtances as pat to his purpoſe, in the reigns of the James's or Charles's, that followed Queen Elizabeth, and to them I

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refer him. Thus far I have ventured to talk with this writer about his positions; but I am afraid to accompany him any longer, and surmise any thing about the execution of the D. of D. or of H. R. H. the D. of C. knowing, indeed, very little of their life or conversation, excepting that I remember to have heard the latter, some years ago, put a finishing stroke, not to constructive breaches of the peace by the Pen, but to actual Rebellions, in favour of the Scotish line of Kings, and of Hereditary Right, by his victory at Culloden. What these two persons, therefore, have lately done, that under the most absolute sway, even of a woman, could be prosecuted in any way, I am at a loss to guess. They seem to me to be mere negative signs at present. Upon my honour, I am not only amazed at the introduction of such matter, but I really and seriously wish the *Loyal Briton*, for his own sake, would stop his pen, at least until he has read *Droit le Roy*, learnt what the House of Lords voted against the Author, and then calmly consider with himself, whether the present Ministry may not christen his piece (without the aid of a Bishop) a Libel, and make some orders of equal effect against him. It is disagreeable even to have a resolution for a prosecution pass against one, although no actual prosecution ensue. There is, I can assure him, nothing which the Administration abominate more than this species of writing, which is of a very libellous nature, if not an actual Libel. The *Loyal Briton* can be but lately arrived from foreign parts, or he would never run headlong, with all his Loyalty, into such extravagant transgressions of Zeal! One would think he imagined to himself a Stuart still upon the Throne. His meaning, as I suggested before, may be good, and therefore it is that I drop all this advice to him: But he is certainly no more than a novice, as yet, in the knowledge of this constitution, country, or administration.

Excuse this last digression, and some others, which my own warmth in these speculations has insensibly led me into, although foreign, I allow, from the main subject of my letter: But when a man has once got a pen

into

into his hand, it is difficult for him to refrain from venting ſome of his own conceits, notwithſtanding he at firſt reſolved to relate only the ſentiments of others. We have all of us in reality too much vanity, and too much prejudice alſo, I fear.

To end, however, with what gave riſe to this letter. The province of news-papers is to give every man his due, and to ſet his conduct in its true light, by a ſimple relation of facts and nothing more, that the proper reputation may attend him accordingly. This was my only motive in ſitting down to write; for, being totally impartial myſelf, I aim at nothing elſe. As to the praiſe of fine writing and ingenuity, let it go where it liſt, I never had a thought about it, and can be perfectly content with having my words as plain and artleſs as my purpoſe.

I am, SIR,

GRAY'S-INN,
Auguſt 31, 1764.

Entirely, *&c.*

CANDOR.

Second Piece in Vindication of
Letter on Libels, Warrants
Seizure of Papers &c.

Third Piece.
Postscript to Letter on
Libels Warrants &c.

Fourth Piece, New
Postscript on Libels.

Fifth Piece. — Doctrine
of Libels published in 1752

~~Priviledge of Part.~~

Contempts

~~Attachment for~~

Contempts. 159.

to 190. ~~Fr Kaufman~~ 165 Apsley's Kid

Wrongs case cited ~~Fr Kaufman~~ George Milton 166.

Lilbourne's Case 168 189. 191.

King v. Bingley. 189.

Queen v. Langley. 169.

Dr. Middleton's Case 169.

Barber's Case. 179.

Letter on Libels.

Prior Piece in the 4th Vol.

2d. w. bookseller liable criminally for publication & sale of a libel without his knowledge 111. Ad. 31. & 3 Bl. 38. 41.

Fury Power. 126.

Little Fifth Piece. Letter from Lundor.